MINUTES
(Subject to Approval by the Task Force)

Health Care Task Force
January 6, 2012
Capitol Building, Boise Idaho
East Wing, Room 42

In attendance were Co-chairs Senator Dean Cameron and Representative Gary Collins; Senators John Goedde, Patti Anne Lodge, Tim Corder, John McGee, Joyce Broadsword, and Dan Schmidt; Representatives Sharon Block, Carlos Bilbao, Fred Wood, Janice McGeachin, John Rusche and Elaine Smith. Legislative Services Office (LSO) staff members present were Ryan Bush, Matt Ellsworth and Charmi Arregui.

Others present at the meeting included Representatives Phylis King, Sue Chew, Max Black, Steven Thayn; Former Representative Margaret Henbest; Benjamin Davenport, Risch Pisca PLLC; Woody Richards, Attorney/Lobbyist; Heidi Low, American Cancer Society/Cancer Action Network (ACS/CAN); John Watts and Elizabeth Criner, Veritas Advisors LLP; Director Bill Deal, Deputy Director Tom Donovan and Elwood Kleaver, Department of Insurance; Marnie Packard, PacificSource; Dennis Tanikuni, Idaho Farm Bureau; Toni Lawson, Idaho Hospital Association (IHA); Rakesh Mohan, Office of Performance Evaluations (OPE); Mike Berlin, Idaho Alzheimer's Planning Group (IAPG); Dr. Sarah Toevs, Center for Study of Aging; Jayson Ronk, Idaho Association of Commerce and Industry (IACI); Molly Prengaman; Kurt Stembridge, GlaxoSmithKline; Bill Roden, Hopkins Roden and Delta Dental of Idaho; Jean De Luca, Delta Dental of Idaho; John Eaton, Idaho Association of Realtors; Pam Eaton, Idaho Retailers Association/Idaho Lodging & Restaurant Association; Kathie Garrett, Advocates for Addiction Counseling and Treatment (AACT); Denise Chuckovich, Idaho Primary Care Association (IPCA); Lee Flinn and Peg Munson, American Association of Retired Persons (AARP); McKinsey Miller, Gallatin; Tony Poinelli, Idaho Association of Counties; Jason Kreizenbeck, Mountain View Hospital, Idaho Falls; Joie McGarvin, America's Health Insurance Plans; Suzanne Budge, SBS Associates LLC; Ryan Fitzgerald, Principle Strategic; Larry Benton, Benton, Ellis; Keith Johnson, Oracle; Bill Hoffman, Main Street Alliance; Zach Hauge, Capitol West; Skip Smyser, Connolly & Smyser, Ctd.; and Hannah Brass, Planned Parenthood.

The meeting was called to order at 1:30 p.m. by **Co-chair Senator Cameron**. He welcomed everyone and called for a motion on the December 14, 2011 minutes. **Senator Schmidt moved that the December 14, 2011 minutes be approved, seconded by Senator Lodge and the motion passed unanimously by voice vote.**

Director Bill Deal, Department of Insurance (DOI), presented an updated draft of legislation for an insurance exchange. He announced that **Tom Donovan** is the new Deputy Director (DOI) and DOI's new legal counsel is **Rene Martin.** He said that **Deputy Director Donovan** was the coordinator of this draft which is available on LSO's website at:
legislature.idaho.gov/sessioninfo/2012/interim/healthcare0106_health_ins_exchange.pdf

Director Deal went through the high points of the draft, pointing out that this act would implement a health insurance exchange in Idaho. It is the public policy of the state of Idaho to preserve for its residents individual choice and responsibility in making health coverage decisions. **Director Deal** said this is the purpose of this draft, adding that a health insurance exchange would be state-operated and market-driven. None of the definitions changed in the draft since the December 14th meeting. On page 3 of the draft, line 36, Section 41-6104 pertains to "Establishment of the Exchange and Board" with 13 members, 11 being voting members. On page 4, lines 8-18 the draft states: "... the governor shall appoint three (3) members representing different health carriers; two (2) members representing producers; one (1) member representing individual consumer interests; one (1) member representing small employer business interests employing between one and ten employees; one (1) member representing small employer business interests employing between eleven and twenty-five employees; and one (1) member representing small employer business interests employing twenty-six or more employees. One (1) member shall be a member of the senate appointed by the president pro tempore of the senate, and one (1) member shall be a member of the house of representatives appointed by the speaker of the house. The director or his designated representative and the director of the state department of health and welfare or his designated representative shall each serve as ex officio non-voting members of the board."

Senator Schmidt asked if a businessman with a small business does well and gets more employees, would that person change categories, if sitting on the board. **Director Deal** answered that individual health insurance policies were being dealt with in this draft legislation and small group policies with one to fifty employees. In that other category (over fifty) if that business grows, then that employer would no longer be eligible for a small group policy. He said that would be an issue DOI would have to deal with on the replacement, or maybe not; he said he didn't know. **Senator Cameron** thought that the employer would be eligible at the time the employer was appointed. At reappointment, perhaps that person would no longer be eligible, but at the time appointed, if the employer met that definition, it would probably be fine. **Senator Schmidt** clarified that he was trying to specify that it was between these categories of one to ten, etc. that he thinks is much more likely to be variable. He thinks it would be hard to set those categories and stay with them. **Senator Cameron** said he thought the intent was to try to make sure that not all employers are equal or are dealing with the same problems, so the draft was trying to diversify consumer interests to make sure they are representative of different segments or different challenges that might occur for a small business person. **Director Deal** said that as DOI proceeds with this, the small business pretty much stays within the same realm in numbers of employees. He said that when reappointed, then they could be adjusted.

Representative Wood clarified that this was discussed in the committee, but the federal legislation says that not a majority of the board can be from the insurance industry, asking if that was correct. **Director Deal** confirmed that to be true. **Representative Wood** said it should be noted that with three carriers and two producers already on the board, that the two members of the Legislature could not be from the insurance industry, appointed by the Pro Tem and Speaker. **Director Deal** said that was correct.

Senator Broadsword asked if there was any limitation on number of terms a member on the board could serve and **Director Deal** said that there is no limitation on terms.

Director Deal referred to page 5, line 32, 41-6105 "Exchange Plan of Operation" and said this section had been discussed previously, asking for questions. **Senator Cameron** asked if anything in this section had changed since the last meeting and **Director Deal** answered that nothing had changed.

Representative Rusche asked if the plan of operation would come before the Legislature in the form of a rule and **Director Deal** answered in the affirmative. **Deputy Director Donovan** clarified that those elements that would rise to the level of requiring rulemaking would come before the Legislature as a rule, but not necessarily every single thing included in the plan of operation; some things may not require that.

Director Deal referred to page 6, line 32, 41-6106 "Powers and Authority" of the board, stating that some language had been changed in paragraph (c) and paragraph (d) added. **Representative McGeachin** inquired about language on page 6 and 7, asking for clarification on what an applicable provision is. **Deputy Director Donovan** explained that applicable provisions would be provisions of the plan of operation or other applicable law or requirements for qualified health plans or health benefit plans and carriers, basically. The exchange and the board would not be in a position to duplicate what DOI might already be doing in terms of reviewing requirements or provisions of health plans or insurance rates.

Senator Cameron said he thought **Representative McGeachin** had brought up a good question. The recent ruling of HHS says that states shall determine what a qualified health plan is; he asked if this draft contemplates that the exchange shall determine the qualified health plan or does DOI. **Deputy Director Donovan** said that DOI would likely do that and not the exchange. **Director Deal** added that with the new flexibility given by HHS in the essential benefits, DOI would be involved in that also. **Senator Cameron** said as he read the announcement by media reports, he was led to believe that only the state could determine what a qualified health plan is, if in fact Idaho has an exchange. If the federal government operates the exchange in Idaho, then the federal government would determine what a qualified health plan is, asking if that was correct. **Deputy Director Donovan** answered that was not their understanding. He said that the state would be the one to designate or choose a "benchmark essential health benefit plan." HHS issued an announcement on December 16 in the form of a bulletin which precedes what is expected to be a forthcoming rule with more detail. **Senator Cameron** said he hoped they were not miscommunicating, since he was noticing very smart audience members nodding heads, adding that this is very confusing. If the state were to abrogate its responsibility and not establish an exchange, then the federal government will establish an exchange in Idaho. He asked: "Who determines the qualified health plan?" **Deputy Director Donovan** said that the qualified health plan to be sold in the exchange would be determined by whoever oversees the exchange. **Senator Cameron** clarified that if the state wants DOI to determine what an appropriate qualified health plan is for Idahoans, then Idaho needs to be operating its own exchange. **Director Deal** said that "qualified health plan" is the key.

Senator Corder asked about the line of credit from a licensed financial institution, and would we be expecting the insurance companies themselves who participate in the exchange to be those licensed financial institutions, since this exchange would have no assets with which to pledge for a line of credit. **Director Deal** responded that description in this bill is much like that for the

High Risk Reinsurance Pool where the Pool has a line of credit that's been established. The bank that extends that line of credit understands that there is a stream of money involved and it has worked very well; the exchange would have the same type of plan. **Senator Cameron** added that it would be on a cash flow basis and would be an assessment to the carriers to be able to pay for the expenses of operating the exchange. In many cases there must be a time frame from which expenses are incurred and when paid by the assessment. **Senator Corder** said he understood that it was for cash flow, but if he personally went to his bank to ask for a line of credit for his cash flow, he knows this must be based on an asset.

Director Deal pointed out on page 8 of the draft legislation, line 31, 41-6107 "Navigators" that no changes had been made to this section since the last meeting or in the last three sections of the draft on page 9. **Director Deal** said this concluded his overview of this draft legislation as implementation for the Idaho exchange for the task force's consideration.

Representative McGeachin said that she had been intrigued by the ruling that came out from HHS since this task force last met relating to these qualified health plans. She asked for more detail on what is meant by "essential health benefits" in the new bulletin where it was announced that states could select a "benchmark plan." She said she was curious to know exactly what that means. **Deputy Director Donovan** answered that the PPACA says that all plans sold on the exchange, going forward to 2014, must have ten essential elements or "essential health benefits" set forth in statute, including ambulatory services, rehabilitative services, preventive, hospitalization, etc. He said that for a long time states were expecting HHS to dictate the minimum level, but the bulletin that came out on December 16th says that states can select what the "benchmark plan" is to meet these ten various elements of an "essential health benefit" plan. It has to be part of any plan sold through an exchange, but it is not a synonym for a qualified health plan or a health benefit plan to be sold on the exchange. An exchange would be able to either decide what qualified health plans can be sold on the exchange or, as in this draft, let the market decide to the extent we can. All carriers who are qualified to sell in Idaho and meet legal requirements and plan of operation requirements would be eligible to sell their plans on the exchange in Idaho. There is the potential that a federal exchange would ratchet that down and allow only specific qualified health plans be sold to Idahoans on an exchange. Any of those plans will have to have the "essential health benefits" and, in the bulletin, there is flexibility given to states with regard to the benchmark, but it is not with carte blanche flexibility. The basic elements set forth in statute must be met, and the bulletin states that to the extent a benchmark plan selected by a state does not have all ten elements, then HHS would require that to be filled in through some other plan. The details were not specific, but **Deputy Director Donovan** thought this might be set forth in future rulemaking. The other premise is that a plan would meet what is offered by a typical employer so if a state does not choose an "essential health benefit" package to use as a benchmark, there is a fall-back position and a default one where HHS would designate for a particular state that the largest number of people enrolled in a small employer plan in that state would be the default benchmark plan in that state. **Representative McGeachin** commented that the benchmark wasn't meant to wipe out the essential health requirements in the PPACA, and an exchange must have those ten "essential health benefits." More will be known when the HHS rule comes out.

Representative Rusche said that the components of "essential health benefits" are like the Medicaid optional or non-optional services, but it doesn't say how many services. Choosing a benchmark plan is the basic construct of how those minimal essential benefits would be delivered.

Representative Fred Wood said that the state sets the benchmark plan, whether or not there is a state or federal exchange. However, if there is a federal exchange, the federal government determines which insurers actually are on the exchange and which products will be sold on the exchange, even though the state actually sets the benchmark plan. **Representative Wood** asked if the state runs the exchange, would the state choose which insurers participate, whether market-driven or some other kind of plan, and which products would be sold on the exchange. **Director Deal** affirmed that to be correct. **Senator Cameron** said that if the federal government runs the exchange, then the federal government would determine the benchmark, adding that this is the point where he gets caught up. He wondered if this was critical as to whether or not the task force supports this draft legislation. He does believe this is an important point to the Legislature because a month ago this opportunity was unknown, assuming the federal government would be determining the benchmark regardless of whether Idaho ran an exchange or the federal government. Now it is his understanding that Idaho gets to determine the benchmark if Idaho runs the exchange. **Representative Fred Wood** said he had looked at an email from **Director Armstrong** (DHW) indicating that it made no difference in setting the benchmark, which the states do, whether or not the state or the federal government runs the exchange. **Senator Cameron** said that the difference then is determining the benchmark, who gets to sell insurance, and what a qualified plan is. This was confirmed.

Representative Rusche said that speaking from an operational point of view, if there is a national exchange with a set number of carriers, there would likely not be a multitude of different benefit packages, doubting there would be state individuality on a national exchange. Each would have minimal essential benefits, but constructs of each plan would be different and would look like the federal employee plan package. **Senator Cameron** concurred, adding that if there was a national exchange, there would be one national for-profit carrier and one not-for-profit carrier. Most likely that plan would meet all benchmarks or qualifications of all states, and would not necessarily be individualized to Idaho residents.

Senator Goedde said that at the last meeting of this task force he'd suggested that the insurance commissioner in Oklahoma had an option whereby health exchanges could be rented at a very nominal rate, asking if DOI had looked at that option. **Director Deal** answered that DOI had not looked into rental at all. **Senator Goedde** said it was his understanding that it could be a state-rented plan, and his guess was that it would still be run by some type of board, but the actual, digital makeup of the exchange would be rented. He asked if a rental would still work within the parameters of this draft legislation. **Director Deal** said he assumed not, but said this was something he would have to research. He added that DOI and DHW had been in the planning process, and the next need is to get into implementation where other issues can be investigated, since they are finding it takes money to pay for these project managers or consultants to advise in areas where there is no Idaho expertise. This must be done quickly in order to get spending authority to move forward. **Senator Cameron** said that in the draft language, under "Powers and Authority" the board would have the ability to contract with an entity to run an exchange or the technology side of an exchange.

Senator Schmidt referred to "Definitions" on page 3, lines 25 and 26, asking about "Producer" which means a person required to be licensed to sell, solicit or negotiate disability insurance, asking if that was the same as health insurance. **Director Deal** answered that disability insurance in Idaho statute is health insurance.

Senator Cameron pointed out to the task force that the options with regard to this draft would be to (1) do nothing and have the draft be taken under consideration or (2) vote to endorse the draft to move forward. He said this vote would not obligate a member in a future vote. This draft legislation would go to a germane committee, having been brought before this task force for review, if the task force found it worthy to move forward.

Senator Broadsword moved that this health exchange draft legislation be endorsed by this task force and sent to a germane committee for a hearing to determine whether this would be best for the state or not, seconded by Representative Bilbao.

Representative McGeachin said she would not be able to support this motion; she was not opposed to setting up an exchange in Idaho, but she does have concerns with this potential legislation as drafted. She has made notification of her concerns to **Director Deal** and has offered to talk about these concerns.

Representative Rusche said that the devil is in the details and the "Exchange Plan of Operation" is really going to say whether this could be successful to meet the needs of Idaho citizens. As far as an enabling framework, he said he thought this draft legislation was okay and that he supported the task force's endorsement.

Senator Cameron stated that under Rule 39(h), he is a licensed insurance agent and some might perceive that he would have a conflict, but he said that he believes he would lose revenue if this draft legislation passed. **Senator Goedde** also disclosed that he is a licensed health insurance agent, adding that he did not sell the product. **Representative Collins** said that he was a licensed insurance agent, although semi-retired. With these possible conflicts noted in these minutes, **Senator Cameron called for a roll call vote**. **Senator Goedde** explained that his vote was in support, but he said that he would be open to looking at amendments that might improve the draftt **The motion passed with 11 "Ayes" and 1 "Nay" recorded from Representative McGeachin.**

Senator Broadsword referred to another draft, DRRCB034 which is available on LSO's website at: **legislature.idaho.gov/sessioninfo/2012/interim/healthcare0106_scr.pdf**
She pointed out that there was one small change from the draft presented at the last meeting, made at the request of **Representative McGeachin.**

Mr. Mike Berlin, Idaho Alzheimer's Planning Group (IAPG) addressed DRRCB034, and explained that IAPG was a grass-roots organization. He expressed a need for Idaho to develop a statewide plan or framework for addressing the needs of Idahoans with Alzheimer's disease, as well as family caregivers. He pointed out that IAPG was not looking for funds from the Legislature but primarily was looking for the support of the Legislature through this concurrent resolution in order to apply for grants, as well as to approach state agencies for support as the

plan is developed. Data is currently being collected from surveys and focus groups, from patients and family caregivers. **Mr. Berlin** said IAPG was looking for a vote of support from this task force on the concurrent resolution for IAPG's activities. **Senator Broadsword** pointed out that since the draft was presented at the December 14, 2011 meeting, language had been added in lines 31-33 to clarify IAPG's activities and to address concerns raised.

Senator Lodge commented on the fact that **Mr. Berlin** had said that IAPG was not looking for state funds but was looking for support from state agencies; she asked if support from agencies meant financial. **Mr. Berlin** answered potentially, but that IAPG does not yet know until data is analyzed to find out exactly what the needs are of the people in the state of Idaho. He said that DHW and public health districts may be approached eventually. Every other state plan that **Mr. Berlin** has read talks about increasing awareness throughout the state to educate family members about resources available to attempt to help keep Alzheimer's patients in their homes as long as possible. One need that Idaho may have, in the future, similar to other states, is the need for a public service announcement campaign, which might be best done through the public health districts. Funds might be needed for that, but IAPG's strategy is to approach the Center for Disease Control, the Alzheimer's Association and a variety of national organizations to apply for grants to support those kinds of efforts, as a first line of defense. **Senator Lodge** said that she supported the concept, she personally understands the need, but she expressed her concern about establishing another group that taxpayers may have to support over many other groups or needs that Idahoans have. She emphasized that she would support this, as long as support solicited remains through grant-seeking, but said that she could not support using state funds. Focusing on a certain group caused her concern, since there are so many needs currently.

Senator Broadsword clarified that this draft concurrent resolution helps IAPG to establish a state plan and does not ask for money from any agency, nor will it, until a plan is developed. At that time, if it is decided that state funds may be needed, IAPG would then come back to the Legislature in the future. This draft would require no state funding at this point.
Senator Cameron asked if it was **Senator Broadsword**'s intent that a state plan would be presented before germane committees in the House and Senate to have the ability to accept or reject a state plan, and she answered in the affirmative.

Representative Rusche reminded the task force and **Senator Broadsword** that currently about one-third of Medicaid's budget is for dual-eligibles and seniors who are both Medicare and Medicaid-eligible and a large number of those are patients with dementia. As our population gets older, our state is facing a significant problem. Whether the state pays for this through Medicaid's fee-for-service and assisted living or through grants to help keep people in their homes, the state is going to end up paying for this. He thinks the state needs to figure out how best to deal with this situation in the most efficient manner.

Representative Rusche moved that the task force endorse DRRCB034, seconded by Representative McGeachin, and the motion carried unanimously by voice vote.

Ms. Heidi Low, American Cancer Society/Cancer Action Network, was the last presenter and she said she was at this meeting representing a coalition of over twenty-five organizations who came together for a common purpose, that being increasing the tobacco tax in Idaho. The

coalition consists of the usual suspects, associations dealing with cancer, heart and lung to the less usual, like the Association of Counties who have come together for a common goal. This is not a new concept, and support is still strong with people throughout the state and with organizations. She said that everyone understands the clear health benefits with such an increase. Idaho is currently 42nd in the nation with its cigarette tax at 57 cents per pack. **Ms. Low** said that an increase is being proposed of $1.25 per pack with a parallel increase to other tobacco products. The reason organizations are backing this proposal is simple; the health benefits are clear, especially among kids. Every year in Idaho, approximately 3.1 million packs are either bought or smoked by kids. It has been demonstrated time after time that higher cigarette tax is one of the most effective ways of reducing smoking. With an increase of $1.25 per pack in Idaho, a 20% decrease in sales will result with many youth choosing never to begin the habit. Tobacco use impacts Idaho every day and not just users of tobacco. The state and federal tax burden for every single taxpaying household in Idaho is $539, whether or not that household has a smoker in it. Idaho Medicaid alone has a bill of $83 million annually for health care costs related to tobacco use. Using a formula that takes into account a decrease in sales, a conservative estimate of revenue coming from the proposed increase would be $51.1 million annually. **Ms. Low** said that using that revenue for health care costs related to tobacco use, including tobacco prevention cessation programs that comport with CDC best practices, is supported. Legislation is being drafted.

Representative Rusche stated that in a meeting with the Associated Press, this issue came up and he asked about the tribes. He said that currently tribal sales are not taxed by the state and, if a significant difference in product cost, that would really change the marketplace significantly. He asked her to address this. **Ms. Low** replied that potential legislation does not address the tribes, adding that experiences in other states could be looked at. In all estimates, attrition to tribes and cross-border sales has been taken into account. The perception of people going to buy tobacco from tribes or across borders is actually a lot higher than what actually happens.

Senator Lodge asked if the $1.25 was on top of the current 57 cents tax, totaling $1.82 per pack and **Ms. Low** answered that this was correct. In comparison, Washington state's cigarette tax is $3.02, and another increase is being considered. Idaho would be on par with other surrounding states at $1.82. **Senator Lodge** said she liked even numbers and asked why not make it an even number. **Ms. Low** replied that the coalition would be happy to go up three more cents. **Senator Lodge** said she thinks an even number might make the whole thing easier.

Senator Broadsword asked if there was a reason for choosing the $1.25 amount, which puts small business owners in her district close to the Montana border at a disadvantage. She knew she would be hearing from them, if this legislation goes forward. She asked for help in addressing those small business owners' concerns. **Ms. Low** replied that polling was done at $1.00 and $1.50 and saw that support was actually higher at $1.50, so the coalition went with $1.25 to take into account surrounding states. She said she understood **Senator Broadsword**'s concern, since Montana is at $1.70, but that this raise in tobacco tax would decrease youth use by 20% at $1.25.

Representative Collins looked at literature handed out by **Ms. Low** (available in LSO) and asked if all states surrounding Idaho would have less tobacco tax, except Washington. **Ms. Low**

answered yes, adding that Idaho's cigarette tax would be close to Montana and Utah's cigarette tax. If Oregon and Nevada pass one-dollar increases, Idaho would still be below those two states. **Representative Collins** asked if the increase in revenue would include attrition plus those who would buy from tribes. **Ms. Low** said that the coalition factored in that information since data had been gathered on increases and included smuggling and internet sales, adding that estimates were conservative. An even higher increase in revenue might be the case, but **Ms. Low** said the coalition would rather under-promise than under-deliver a revenue increase.

Senator Cameron thanked everyone for their participation in the task force this past year and said that the task force will reconvene next summer. Any issues that come up between now and then that warrant further discussion will be considered by the task force at that time. He said the task force looked forward to working with everyone at that time.

The meeting was adjourned at 2:30 p.m.